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CRIME PREVENTION AND CRIMINAL JUSTICE

Measures to combat alien-smuggling

Report of the Secretary General

Addendum

1. Additional replies have been received from Australia, Denmark, Madagascar, Mexico, Myanmar, the Philippines and Saudi Arabia, as well as from the Centre for Human Rights at the United Nations Office at Geneva, to the Secretary-General's communications to Member States, via notes verbales, dated 10 February 1994 and 9 June 1994, concerning the steps taken by Governments to give effect, inter alia, to General Assembly resolution 48/102 of 20 December 1993 on prevention of the smuggling of aliens.

2. The measures which Australia has taken to combat the problem of the smuggling of aliens should be seen in the context of the nature and level of illegal arrivals to Australia over the past few years, and the legislation and entry controls already in place. In 1992 and 1993, the number of unauthorized arrivals in Australia by boat numbered 192 persons and the number of inadmissible passengers who came to notice (having either destroyed their documentation en route or arrived with forged documentation) at Australian airports was 116 persons. Although these numbers are relatively low, the Australian Government is concerned about the problem of the smuggling of aliens.

3. While not specifically directed against the smuggling of aliens, Australia's visa system may act as a deterrent to those seeking to circumvent migration requirements. Australia has a universal visa system (except for certain exempt classes, such as New Zealanders). All non-Australian citizens seeking to travel to and enter Australia require authority to do so. The visa system makes the necessary authority available.

4. Australia uses computer systems to facilitate and control entry into the country. The Travel and Immigration Processing System (TRIPS) links offices

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issuing visas in Australia, as well as their counterparts in other countries, to entry points in Australia, and provides visa and passport information about persons travelling to Australia. This assists with the identification of persons known, or suspected to be, involved in the smuggling of aliens. Persons located in Australia can also be checked against the visa database to determine whether they are authorized to remain in the country.

5. Action taken by the Government of Australia specifically to combat the smuggling of aliens includes the following:

(a) Attempting to identify organizations and organizers involved in illegal arrivals in Australia. To date little evidence has been found of sophisticated networks being involved, as is the case in some other countries;

(b) Prosecuting people who assist others in entering Australia illegally. Four persons have been prosecuted for bringing people to Australia illegally by boat; each received a term of imprisonment;

(c) Establishing liaison and exchanging information with other countries on illegal migration and specific instances of attempted illegal entry.

6. Australia hosted the Regional Consultations on Illegal Immigration at Canberra on 11 and 12 April 1994, with the participation of Australia, Brunei Darussalam, Cambodia, Canada, China, Hong Kong, Indonesia, Japan, the Lao People's Democratic Republic, Malaysia, New Zealand, Papua New Guinea, the Philippines, Singapore, Thailand, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and Viet Nam, as well as the United Nations Centre for Human Rights and the International Organization for Migration. The meeting was convened at the initiative of the Government of Australia, and provided a basis for improved regional cooperation and exchange of information concerning illegal migration, including the smuggling of aliens, throughout the region.

7. While the Regional Consultations revealed that illegal migration manifested itself in different ways and to different extents in the various countries in the region, all participants in the meeting suggested that it represented a growing problem for their Governments. There was general support at the meeting for the following measures:

(a) International cooperation to prevent illegal entry into countries;

(b) Strong legislation to deter trafficking in persons;

(c) The speedy return of persons with no legal basis for remaining in a country;

(d) The provision of opportunities for legal migration (temporary or permanent);

(e) Better information exchange and cooperation, at policy, intelligence and technical levels.

8. In Denmark, the National Commissioner of Police seconds police officers to countries from which the smuggling of aliens is carried out on international flights to Denmark and other Scandinavian countries. This enables the police to provide information on Danish and Scandinavian passport and immigration regulations to local police and control agencies. The scheme also includes training for local staff of air carriers with destinations in Denmark. The aim is to improve the skills of staff controlling passengers prior to embarkation for Denmark, thereby making conditions more difficult for those responsible for the organized illegal smuggling of aliens. Since the beginning of 1994, the Danish police have intensified random checks at the borders of Norway and Sweden to detect and control the illicit smuggling of aliens. In addition, there is currently cooperation between the Nordic central police agencies, including the sharing of information on the smuggling of aliens to those countries.

9. Madagascar adheres to the International Convention Relating to Stowaways by Order No. 2792 of 17 July 1992. The law relating to immigration, notably Law No. 62-006 of 6 June 1992 determining the organization and control of immigration, and its implementing Decree No. 66-106 of 2 March 1966, is strictly applied.

10. In Mexico, the National Institute of Migration, a decentralized technical body of the Ministry of Internal Affairs, coordinates the migration services and supervises the entry and exit of aliens crossing the national borders. It is responsible for combating the smuggling of aliens. Owing to the differences in the social and economic conditions between countries to the north and those to the south of Mexico, there is a constant and growing migratory flow between these countries. The Institute is striving to prevent Mexico from becoming a transit bridge. It carries out operations to bring about the rapid return to their places of origin of aliens entering the country in this manner, ensuring respect for basic human rights.

11. The action undertaken ranges from coordination with other authorities at the three levels of government (federal, state and municipal), to the promotion of legislation extending the category of offence envisaged under the General Law on Population and its regulations applicable to persons engaged in the smuggling of aliens increasing the penalties therefor. The power to submit to the competent authorities and to adjudicate action has been decentralized to the regional offices of the Institute. During the period January to August 1994, a total of 1,037 prosecutions were brought.

12. The Institute has implemented the following programmes intended to combat the problem in the frontier zones of the country:

(a) The Northern Frontier Programme started in March 1994, with the following main objectives:

(i) Stemming the flow of illegal migrants towards North America;

(ii) Reducing the number of illegal migrants staying in Mexico;

(iii) Arresting and, where appropriate, expelling all illegal migrants in Mexico;

(iv) Expanding and intensifying the activities of the inspection personnel, with the aim of discouraging alien smuggling;

(v) Reducing the operational costs involved in the movement, custody and expulsion of aliens arrested in Mexico.

(b) The Southern Frontier Programme, which has been in operation since March 1994, has the following main purposes:

(i) Strengthening the inspection and supervisory machinery, contributing to improved control of migration in the area;

(ii) Reducing the prevailing high incidence of illegal migration;

(iii) Regularizing the stay in the country of a large number of aliens who are already settled in the region, and have links with Mexican citizens (Mexican spouses and children).

(c) Other operations include a tripartite group established in the city of Tijuana composed of representatives of the Institute, the State Criminal Investigation Department and the Municipal Public Safety Police. This group has been operating on the frontier since July 1990, and its objectives include protecting illegal migrants from criminal gangs and combating the smuggling of aliens in the zone. Another group, having the same composition and purposes, has begun operations in the city of Nogales, Sonora. Both groups have an Advisory Council, composed of prominent members of the community, which effects a quarterly evaluation of the operations jointly with the authorities of the three levels of government.

13. Myanmar stated that it had no significant information to report at present concerning measures taken to combat the smuggling of aliens.

14. The smuggling of illegal aliens into the Philippines has been a long-standing problem in that country. It is estimated that the number of illegal aliens currently in the country number approximately 100,000. In order to deal with this, a bill entitled the "Philippine Immigration and Naturalization Act of 1993" has been proposed in the Congress. It is hoped that the early passage of this bill into law will solve the problem of illegal entrants and the proliferation of criminal groups associated with illegal migration, as well as restructuring and reorganizing the Bureau of Immigration. In anticipation of its approval, the Government, particularly through the Bureau of Immigration, has initiated programmes and other measures to facilitate the implementation of the law, which includes the following features:

(a) Stricter measures against illegal aliens

The Bureau of Immigration has launched a campaign against illegal aliens in the Philippines. The Bureau has offered a reward for every illegal immigrant turned in to the Government. In order to allay public fears that the reward might lead to violent crime by encouraging people to take the law into their own hands, measures to protect illegal aliens are also enforced.

(b) Registration of aliens

It has been recommended by a Senate caucus that a provision should be incorporated in the Alien Legalization Law granting amnesty to all illegal aliens who have stayed at least five years in the country. It was also recommended that a registration fee should be charged per individual, payable in specified instalments over three years. Under the proposed measure, overstaying aliens may apply for legalization to any regional trial court, by submitting documentation showing good moral character and productivity. Once the court has approved the application, the Bureau of Immigration must register the alien. The Government has avoided vesting the decision-making power in any one agency, in order to facilitate the fair and impartial administration of the law and reduce the possibility of corruption.

(c) Presidential issuance of Administrative Order No. 98

President Ramos issued Administrative Order No. 98 in response to the urgent need for a coordinated government effort to stop the alarming increases in cases of passport irregularities and fraud. Particularly relevant are reports of the widespread sale of Philippine passports in China and Hong Kong to facilitate the entry of aliens into the Philippines, and attempts to smuggle aliens into the country in anticipation of the passage of the bill providing for the registration of illegal aliens. Accordingly, Administrative Order No. 98 created an inter-agency committee against passport irregularities. This committee consists of representatives of the Department of Foreign Affairs, the Department of Justice, the Department of the Interior and Local Government, the Central Bank of the Philippines, the Bureau of Immigration, the National Bureau of Investigation, the Philippine National Police, the Philippine Overseas Employment Administration and the National Statistics Office. The committee will prepare a blueprint for a coordinated approach to the problem of passport fraud by defining the duties of each member of the committee. It will also collate and review existing passport procedures, redesign a tamper-proof passport, and promulgate guidelines for the enhancement of the integrity of Philippine passports.

15. In acknowledging the existence of extortion carried out by some members of the immigration intelligence division of the Bureau of Immigration, the Bureau has taken decisive steps to deal with the problem, including the following:

(a) The design of a new alien certificate of registration to be implemented starting in 1994;

(b) Prioritization of the computerization of the Bureau's records, including exit and entry operations in major airports;

(c) Implementation of the alien legalization programme.

16. Other programmes of the Bureau of Immigration include:

(a) Rotation of personnel at the Ninoy Aquino International Airport to prevent fraternization and collusion among Bureau personnel and organized crime groups;

(b) Assignment of intelligence agents and immigration officers to provincial areas to locate illegal aliens;

(c) Decentralization of the Bureau functions;

(d) A reward system for information about illegal aliens;

(e) An information campaign involving radio stations encouraging illegal aliens to register, and soliciting information;

(f) Creation of a Board of Discipline to serve as the disciplinary body against employees of the Bureau who do not discharge their duty properly in respect of illegal aliens;

(g) The holding of regular meetings with diplomatic and consular officials concerning their nationals.

17. The National Bureau of Investigation deals with the illegal smuggling of aliens in accordance with General Assembly resolution 48/102. For example, in coordination with the Bureau of Immigration, information is exchanged with foreign counterparts about the activities and modus operandi of individuals or groups engaged in the smuggling or trafficking of aliens to or from the Philippines. In addition, other members of the law enforcement community are properly trained to deal with the smuggling of aliens. As part of a cooperative effort, the National Bureau of Investigation undertakes investigations of both aliens and nationals who are suspected or proved to have violated immigration laws of the Philippines, as well as of other countries.

18. Regarding the prevention of child-trafficking, a number of measures have been adopted, including:

(a) Screening of unaccompanied minors leaving the country

The Department of Social Welfare and Development is involved in a joint project with the Bureau of Immigration and the Ninoy Aquino International Airport to screen all unaccompanied minors leaving the country. The Department has established a desk at a number of international airports where social workers check the papers of minors leaving the Philippines. Minors applying for passports with the Department of Foreign Affairs are required to submit a certification of travel issued by the Department of Social Welfare. The Department has travel clearance units in its field offices where applications by unaccompanied minors for travel may be evaluated to determine whether their travel is legitimate.

(b) Legislative changes

(i) The Department of Social Welfare has promoted Republic Act No. 7610, "Special Protection Against Child Abuse, Exploitation and Discrimination", which was passed on 17 June 1992, and includes provisions on child-trafficking under section IV, article 7.

(ii) The Department is also promoting a bill on the foreign adoption of Filipino children, which is aimed at preventing child-trafficking in the country. House Bill No. 10363, "An Act Establishing the Rules to Govern Inter-country Adoption of Filipino Children, and for Other Purposes", has recently been approved on a third reading, and a counterpart bill with the Senate is being promoted.

19. In Saudi Arabia, the border guards undertake the tasks of guarding the borders, operating observation points, and conducting land and sea patrols to prevent illegal entry into the country. Any person arrested while attempting illegal entry into the country is subject to the application of the border security system and the applicable regulations. As a result of these measures, the smuggling of illegal immigrants is not considered to be a problem in Saudi Arabia.

20. The Centre for Human Rights of the United Nations Office at Geneva has provided information on several human rights mechanisms, notably those concerned with contemporary forms of slavery and children's issues, which have to some extent addressed the subject-matter of General Assembly resolution 48/102. For example, the Working Group on Contemporary Forms of Slavery of the Subcommission on Prevention of Discrimination and Protection of Minorities has drafted programmes of action for the prevention of the sale of children, child prostitution and child pornography and for the elimination of the exploitation of child labour, which have subsequently been endorsed by Commission on Human Rights resolutions 1992/74 of 5 March 1992 and 1993/79 of 10 March 1993. The programmes of action include, for example, recommendations on international coordination, including the exchange of law enforcement information on suspects involved in cross-border trafficking.

21. In 1990, the Commission on Human Rights appointed a Special Rapporteur on questions relating to the sale of children, child prostitution and child pornography. The Special Rapporteur noted, inter alia, that the increasing internationalization of the sale of children, child prostitution and child pornography was most disconcerting. Children were not only sold for those purposes at the national level but were also trafficked across frontiers far and wide. The problem transcended national frontiers and local jurisdiction and there was an urgent need for international cooperation to counter the illicit trade.

22. Two international human rights instruments are also of relevance: the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Articles 34 and 35 of the Convention on the Rights of the Child provide, inter alia, for the protection of children from all forms of sexual exploitation, abuse, abduction, sale or trafficking, and require the States parties to take all appropriate national, bilateral and multilateral measures for the prevention of such human rights violations. Articles 33 and 68 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families are particularly relevant to the question of preventing the smuggling of aliens. However, this Convention has not yet reached the required number of 20 ratifications or accessions for its entry into force.